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FROM DIRECTORS OFFICE**

JAN 24 2005

TECHNOLOGY CENTER 3500

Kenyon & Kenyon
One Broadway
New York, NY 10004

In re Application of :
Holger Bellmann, et al. : **DECISION ON PETITION**
Application No. 09/166,496 : **TO WITHDRAW THE**
Filed: October 5, 1998 : **HOLDING OF ABANDONMENT**
For: CONTROL DEVICE FOR A SYSTEM, AND
METHOD FOR OPERATING THE
CONTROL DEVICE

This is in reply applicants' Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on August 26, 2004.

The petition is **DISMISSED**.

A review of the file record reveals that an Office action was mailed to applicants on December 16, 2003. Since a response was not received before the expiration of the six-month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on July 27, 2004.

Petitioner contends that the December 16, 2003 Office action was not received.

There is a strong presumption that an Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of March 16, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

The petitioner has failed to comply with requirement (3) indicated above. In this regard, in the petition filed August 26, 2004, petitioners state, "Attached to this Petition is a copy of the file-jacket data sheet on which the non-received Office Action mailed on December 16, 2003 would have been entered had it been received and docketed. Also attached to this Petition is a copy of a log showing all incoming mails received from the Patent Office for the relevant period (12/17/03 – 12/31/03) following the mailing of the Office Action on December 16, 2004 by examiner Brian Broadhead who is in charge of examining the above-identified application. In addition, docket sheets showing all docketed due-date entries for March 16, 2004 (the three-month due date for responding to the Office Action mailed on December 16, 2003) are also attached." However, a review of the entire application has been conducted and the above-noted file-jacket data sheet, the incoming mail log, and the docketed due-date entries for March 16, 2004 have not been located. As a result, petitioner's evidence of non-receipt of the Office action mailed December 16, 2003 is insufficient to withdraw the holding of abandonment, and the petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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SNM/rwg: 01/03/05